



# MONTANA LEGISLATIVE BRANCH

## Legislative Fiscal Division

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Director  
AMY CARLSON

ECONOMIC AFFAIRS IC  
JANUARY 19, 2012  
Exhibit 8

DATE: January 19, 2012  
TO: Economic Affairs Interim Committee  
FROM: Kris Wilkinson *KBW*  
RE: Workers' Compensation Insurance Premiums for State Agencies

The purpose of this memorandum is to provide information on the costs of workers' compensation insurance premiums for state agencies in FY 2012 as compared to the budget provided by the legislature. The memorandum also provides information on the impacts of changes contained in HB 334 that also impact state agency budgetary authority as it relates to workers' compensation premiums.

During deliberations on the General Appropriations Act (HB 2), the Senate approved an amendment requested by Senator Ryan Zinke to reduce general fund appropriations of state agencies that had paid some portion of workers compensation costs with general fund in FY 2010 (base year). Reductions totaled \$1,113,150 in FY 2012 general fund appropriation authority for the selected agencies. Figure 1 compares the general fund provided to impacted state agencies including the reduction in the FY 2012 budget and the estimated general fund premium payment for workers' compensation that will need to be paid by the agency in FY 2012.

Included in the statute is a requirement that in any year in which the workers' compensation premium due from a state agency is lower than the previous year, the appropriation for that state agency must be reduced by the same amount that the workers' compensation premium was reduced and the difference must be returned to the originating fund instead of being applied to other purposes by the state agency submitting the premium. Figure 2 provides information on the premium costs for state agencies in FY 2011 and FY 2012 to show the impacts of the statute.

Figure 2

State Agency Workers' Compensation Costs Comparison between FY 2011 and FY 2012 Premium Costs			
Agency	FY 2011 Premiums Total	FY 2012 Premiums Total	HB 334 Appropriation Reductions
Legislative Branch	\$89,974	\$79,455	(\$10,519)
Consumer Council	3,909	3,767	(142)
Judicial Branch	265,771	218,405	(47,366)
Governor's Office	38,518	34,752	(3,766)
Secretary of State	53,210	37,831	(15,379)
Commissioner of Political Practices	2,186	2,109	(77)
State Auditor's Office	36,673	30,999	(5,674)
Office of Public Instruction	132,611	86,805	(45,806)
Crime Control Division	9,255	7,748	(1,507)
Department of Justice	1,248,602	1,168,934	(79,668)
Public Service Regulation	20,935	16,891	(4,044)
Board of Public Education	2,964	2,853	(111)
School for the Deaf and Blind	83,803	67,252	(16,551)
Montana Arts Council	5,133	5,011	(122)
Montana Library Commission	15,684	12,533	(3,151)
Montana Historical Society	31,536	30,952	(584)
Fish, Wildlife, and Parks	568,747	549,534	(19,213)
Department of Environmental Quality	215,077	169,361	(45,716)
Department of Transportation	4,443,735	3,859,668	(584,067)
Department of Livestock	191,639	150,835	(40,804)
Department of Natural Resources and Conservation	639,888	507,863	(132,025)
Department of Administration	332,637	263,117	(69,520)
Department of Revenue	470,752	270,813	(199,939)
Montana State Fund	265,418	188,736	(76,682)
Public Employee Retirement	17,505	15,423	(2,082)
Teachers Retirement Board	9,016	7,234	(1,782)
Office of Public Defender	108,234	94,799	(13,435)
Department of Agriculture	63,086	50,665	(12,421)
Department of Corrections	1,942,385	1,742,049	(200,336)
Department of Commerce	114,029	119,084	N/A
Department of Labor and Industry	600,848	463,786	(137,062)
Department of Military Affairs	255,165	198,383	(56,782)
Department of Public Health and Human Services	4,381,286	3,300,815	(1,080,471)
Total	\$16,660,211	\$13,758,462	(\$2,901,749)



# Montana Legislative Services Division

## Legal Services Office

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DATE: October 26, 2011

TO: Kris Wilkinson, Fiscal Analyst II

FROM: Jaret Coles, Legislative Staff Attorney

RE: Legal Opinion Regarding Interplay of HB 2 and HB 334

### FACTS

During the 62<sup>nd</sup> Legislative Session, House Bill No. 2 (HB 2)<sup>1</sup> was the General Appropriations Act and House Bill No. 334 (HB 334)<sup>2</sup> was a bill that generally revised workers' compensation laws. It is my understanding that HB 334 is anticipated to save agencies money on workers' compensation premiums. Furthermore, in anticipation of these savings, the Legislature placed statutory language in section 7 of HB 334 to reduce appropriations when such an event occurs. The relevant language is codified in section 39-71-403(1)(b)(iv), MCA, and provides as follows:

In any year in which the workers' compensation premium due from a state agency is lower than in the previous year, the appropriation for that state agency must be reduced by the same amount that the workers' compensation premium was reduced and the difference must be returned to the originating fund instead of being applied to other purposes by the state agency submitting the premium.

It is also my understanding that most agencies received appropriation reductions in HB 2 in anticipation of savings from workers' compensation premiums. Using the Legislative Branch as an example, page A-1 of HB 2 provided:

Legislative Services includes a reduction in general fund money of \$8,877 in FY 2012 and \$8,840 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.<sup>3</sup>

<sup>1</sup> See Ch. 363, L. 2011. HB 2 was initially sent to enrolling on April 13, 2011, and it was returned with the Governor's proposed amendments on April 22, 2011. After the Legislature accepted the proposed amendments, HB 2 was sent to enrolling for a second time on April 29, 2011, and signed by the Governor on May 12, 2011.

<sup>2</sup> See Ch. 167, L. 2011. HB 334 was sent to enrolling on March 30, 2011, and was signed by the Governor on April 12, 2011.

<sup>3</sup> The first version of this language was proposed on the Senate Floor on March 28, 2011, and passed by a vote of 39 to 11. The amendment is located on the Legislative Branch website at:

<http://data.opi.mt.gov/bills/2011/AmdHtmS/HB0002142.HTM>

Clearly the safest approach is to calculate the required HB 334 reduction without taking into account any other reductions. As such, using the Legislative Branch as an example, the HB 2 reduction of \$8,877 for FY 2012 would not be taken into account and the Legislative Branch would have less money to operate in the 2013 biennium.

### ***B. LEGISLATIVE INTENT WHEN STATUTE IS AMBIGUOUS***

In the event that an agency desires to utilize the credit, it would presumably do so on the grounds that the language in HB 334 is ambiguous. Legislative intent may be determined in a number of ways when a statute is ambiguous. A court presumes that the Legislature would not pass meaningless legislation, and the court must harmonize statutes relating to the same subject so as to give each effect. The court can look to the legislative history of the statute. Great deference and respect must be given to interpretation of the statute by persons and agencies charged with its administration. *Mont. Contractors' Ass'n, Inc. v. Dept. of Highways*, 220 Mont. 392, 395, 715 P.2d 1056, 1058 (1986), followed in *Albright v. St.*, 281 Mont. 196, 206, 933 P.2d 815, 821-22 (1997); *see also, Winchell v. Dept. of Natural Resources and Conservation*, 1999 MT 11, ¶ 20, 293 Mont. 89, 972 P.2d 1132 (following *Albright*).

As applied here, an agency could argue that the intent of the Legislature in both HB 2 and HB 334 was to reduce agency appropriations in order to account for any savings from workers' compensation reform and nothing more. By not taking into account a credit for the HB 2 reduction, some agencies will effectively receive a double reduction, depending on the actions of the Legislature in HB 2. In order to rely on this position, an agency could rely on the "great deference" given in interpretation of the statute. Additionally, an agency could rely on legislative history and argue that the failure to give a credit is inconsistent with legislative intent. *See State v. Heath*, 2004 MT 126, 321 Mont. 280, 90 P.3d 426 (2004) (reasoning that the statute as drafted was inconsistent with legislative intent).

Proceeding down this path is not the safest approach since section 17-8-103(1), MCA, makes it unlawful for a state agency "to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the legislative appropriation, including any approved, authorized, and valid budget amendment".

I hope that I have adequately addressed your questions. Please let me know if you have any additional questions or concerns.